

REMARKS

This Application has been carefully reviewed in light of the Final Action issued July 26, 2006. Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 are pending in this Application. In order to advance prosecution of this Application, Claims 1, 16, 20, and 26 have been amended. Applicant respectfully requests reconsideration and favorable action for this Application.

Claims 20-25 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner does not understand how cells are aggregated without regard to destination. Aggregating without regard to destination can be accomplished because no routing decisions are made at this time. See page 13, lines 3-18, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 20-25 are in accordance with 35 U.S.C. §112, second paragraph.

Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification to show possession of the invention. Independent Claims 1, 16, 20, and 26 have been amended to address matters raised by the Examiner. Therefore, Applicant respectfully submits that Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 are in accordance with 35 U.S.C. §112, first paragraph.

Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification to make and/or use the invention. The Examiner does not understand how traffic can be sent without a destination address. There is nothing in the claims that says traffic is being sent without destination information. The claims specify that aggregation is performed without regard to destination. This is

accomplished because no routing decisions are made at this time. See page 13, lines 3-18, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1, 3-7, 9-16, 18-33, 35-38, and 40 are in accordance with 35 U.S.C. §112, first paragraph.

Claims 1, 3-7, 9-12, 13-16, 18, and 19 stand rejected under 35 U.S.C. §102(e) as being anticipated by Keller-Tuberg. Independent Claims 1 and 16 recite in general an ability to aggregate ingress traffic streams into a single combined traffic stream without regard to any destination of any packet from any ingress traffic stream. By contrast, the Keller-Tuberg patent merely discloses multiplexing traffic from a large number of subscribers into a smaller number of ATM flows. (See col. 2, lines 43-45, of the Keller-Tuberg patent). In addition, the Keller-Tuberg patent discloses multiplexing packet flows from many individual subscribers into shared packet flows based on the ISP destination according to VP/VC identifiers. (See FIGURE 2, multiplexing table, and col. 5, line 66, to col. 6, line 5, of the Keller-Tuberg patent). The Keller-Tuberg patent specifically teaches using path identifiers associated with a destination ISP to multiplex traffic. (See col. 5, lines 54-60, of the Keller-Tuberg patent). As a result, the Keller-Tuberg patent expressly teaches away from a capability of aggregating a plurality of ingress traffic streams into a single combined traffic stream without regard to any destination of any packet from any ingress traffic stream as required by the claimed invention. Thus, not only does the Keller-Tuberg patent fail to disclose multiplexing a plurality of ingress traffic streams into a single combined traffic stream as required by the claimed invention, the Keller-Tuberg patent also fails to perform its multiplexing without regard to any destination of

any packet from any ingress stream as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 1, 3-7, 9-12, 13-16, 18, and 19 are not anticipated by the Keller-Tuberg patent.

Claims 20-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg in view of Ksirasagar. Independent Claim 20 has similar limitations shown above to be patentably distinct from the Keller-Tuberg patent. Moreover, the Ksirasagar patent does not include any additional disclosure combinable with the Keller-Tuberg patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 20-25 are patentably distinct from the proposed Keller-Tuberg - Ksirasagar combination.

Claims 26-33, 35-38, and 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Keller-Tuberg. Independent Claim 26 has similar limitations shown above to be patentably distinct from the Keller-Tuberg patent. Therefore, Applicant respectfully submits that Claims 26-33, 35-38, and 40 are patentably distinct from the Keller-Tuberg patent.

This Response to Examiner's Final Action is necessary to address the Examiner's interpretation of the cited art in an attempt to support a rejection of the pending claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the current interpretation of the cited art.

Applicant respectfully submits that the finality of the Final Action is premature. The Examiner has re-opened prosecution of this Application and raised new grounds of rejection that was neither necessitated by amendment nor based on any information disclosure statement. Applicant made no amendments to the claims in the Response to Examiner's Final

Action submitted February 13, 2007. Now the Examiner sets forth new rejections and new art not previously presented during prosecution of this Application. As a result, Applicant is not given any assurance that the amendments to the claims and the arguments presented herein will be properly considered by the Examiner due to the finality of the Final Action. Therefore, Applicant respectfully requests withdrawal of the finality of the Final Action.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees and credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over a horizontal line.

Charles S. Fish

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